



DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE-2021-0002; [EEEE500000 21XE1700DX EX1SF0000.EAQ000]

RIN 1014-AA43

Oil and Gas and Sulfur Operations on the Outer Continental Shelf — Maximum Daily Civil

Penalty Amounts for Violations of the Federal Oil and Gas Royalty Management Act

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Safety and Environmental Enforcement (BSEE) regulations that set Maximum Daily Civil Penalty (MDCP) amounts for violations of the Federal Oil and Gas Royalty Management Act (FOGRMA). The amended BSEE regulations will cross-reference regulations of the Office of Natural Resources Revenue (ONRR) that also set MDCP amounts for FOGRMA violations. This cross-reference will ensure consistency between BSEE's FOGRMA MDCP amounts and ONRR's FOGRMA MDCP amounts. It will also ensure consistent compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (FCPIAAIA of 2015) and related Office of Management and Budget (OMB) guidance, while reducing unnecessary duplication of effort and costs to the agency.

DATES: This rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Kirk Malstrom, Bureau of Safety and Environmental Enforcement, Office of Offshore Regulatory Programs, Regulations and Standards Branch at (202) 258-1518 or by email: regs@bsee.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Legal Authority

On November 2, 2015, the FCPIAAIA of 2015, Public Law No. 114-74, section 701 (codified at 28 U.S.C. 2461 note) became law. The FCPIAAIA of 2015 required Federal agencies to adjust the level of civil monetary penalties imposed under each agency's regulations with an initial "catch-up" adjustment through rulemaking, if warranted, and then to make subsequent annual adjustments for inflation. Under the FCPIAAIA of 2015, agencies were required to publish the initial annual inflation adjustments in the *Federal Register* by no later than January 15, 2017 and are required to publish annual adjustments by no later than January 15th of each subsequent year. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes that authorized the penalties.

BSEE has authority to impose civil penalties for violations of the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 – 1356a (OCSLA). BSEE regulations implementing its authority to impose civil penalties under OCSLA are found at 30 CFR 250.1400 - 250.1409. In addition, BSEE has authority to impose civil penalties for violations of FOGRMA, 30 U.S.C. 1701 *et seq.*, under section 109 of that Act (30 U.S.C. 1719). BSEE's regulations implementing its authority to impose penalties under FOGRMA are found at 30 CFR 250.1450 - 250.1456, 250.1460 - 250.1464, and 250.1470 - 250.1477. Specifically, BSEE may impose civil penalties under FOGRMA – after providing a Notice of Noncompliance (NONC) and an opportunity to correct the violation(s) – for noncompliance with any applicable statute, regulation, order, or lease term relating to any Federal oil or gas lease. *See* 30 CFR 250.1451. BSEE may also impose penalties under FOGRMA, without providing prior notice or an opportunity to correct the violation, for certain knowing or willful violations of the substantive provisions of FOGRMA (*e.g.*, failure or refusal to permit lawful entry, inspection, or audit; knowing or willful submission of false or misleading information). *See id.* at § 250.1460.

Sections 250.1453 and 250.1460 of BSEE's existing regulations specify the MDCP amounts, as prescribed by section 109 of FOGRMA (30 U.S.C. 1719), for the violations described in sections

250.1451, 250.1453, and 250.1460.¹ As required by the FCPIAAIA of 2015, however, BSEE's FOGRMA civil penalty amounts must be adjusted annually for inflation.

Within the Department of the Interior (the Department), ONRR is the agency responsible for collecting revenue from energy leases and auditing royalty payments under FOGRMA. Like BSEE, ONRR also has authority to impose civil penalties for certain violations of FOGRMA. ONRR's civil penalty regulations are found in 30 CFR part 1241. As required by the FCPIAAIA of 2015, ONRR also must annually adjust, for inflation, the MDCP amounts in its regulations for FOGRMA violations. ONRR published such a final rule for calendar year 2017 on April 24, 2017, adjusting the MDCP amounts in 30 CFR part 1241 for FOGRMA violations. *See* 82 FR 18858. Each year since, ONRR has calculated and adjusted the MDCP amounts in 30 CFR part 1241 in accordance with the FCPIAAIA of 2015. On February 2, 2021, ONRR published the final rule adjusting the MDCP amounts in 30 CFR part 1241 for calendar year 2021. *See* 86 FR 7808.²

Because FOGRMA sets the MDCP amounts for penalties assessed by BSEE and ONRR for violations of FOGRMA, and the FCPIAAIA of 2015 uniformly applies to require adjustments to the civil penalties that may be assessed by both agencies as calculated from the same base year, BSEE's FOGRMA MDCP amounts must be the same as ONRR's FOGRMA MDCP amounts.

II. Changes Made to Existing BSEE Regulations

BSEE is amending §§ 250.1453 and 250.1460 of its FOGRMA civil penalty regulations in order to cross-reference the ONRR civil penalty regulations in 30 CFR part 1241. By cross-referencing the ONRR regulations, BSEE's MDCP amounts for FOGRMA violations will be the

¹ Under existing § 250.1453(a), BSEE may initially impose civil penalties of up to \$500 per day for each violation of FOGRMA that is not corrected within 20 days of receipt of a NONC identifying the violation. Under existing § 250.1453(b), BSEE may increase the MDCP amount up to \$5,000 per day for each violation not corrected within 40 days of the NONC. In addition, under existing § 250.1460(a) and (b), BSEE may impose penalties, without prior notice, of up to \$10,000 or \$25,000 per day, respectively, for the FOGRMA violations specified in those provisions.

² Specifically, ONRR amended 30 CFR 1241.52(a)(2) to authorize civil penalties of up to \$1,288 per day for each violation of FOGRMA that is not corrected within 20 days of receipt of a NONC identifying the violation. *See* 86 FR 7808, 7810. Under the amended 30 CFR 1241.52(b), ONRR may impose civil penalties of up to \$12,891 per day for each violation that is not corrected within 40 days of receipt of the NONC. Finally, ONRR amended 30 CFR 1241.60(b)(1) and (b)(2) to authorize imposition of penalties, without prior notice, of up to \$25,780 or \$64,452 per day, respectively, for certain specified violations of FOGRMA. *Id.*

same as ONRR's MDCP amounts, ensuring ongoing consistency within the Department as ONRR adjusts the FOGDMA MDCP amounts annually for inflation. In addition, this rule will avoid the duplication of effort and unnecessary expenditures within the Department that would occur if both BSEE and ONRR were to develop and publish separate final rules every year adjusting their corresponding FOGDMA MDCP amounts.

III. Administrative Procedure Act Requirements

In general, an agency must first publish a proposed rule, to provide prior notice and an opportunity for public comment, before adopting a final rule. However, no such proposal is necessary for this final rule. Section 4(b)(2) of the FCPIAIA of 2015 states that agencies shall adjust civil monetary penalties "notwithstanding Section 553 of the Administrative Procedure Act." In this manner, Congress exempted the annual inflation adjustments implemented pursuant to the FCPIAIA of 2015 from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* (the APA), allowing agencies to publish FCPIAIA adjustments as final rules without prior proposed rules.

This interpretation of the APA's application to FCPIAIA of 2015 is confirmed by the most recent annual guidance issued by OMB Memorandum on December 23, 2020, in Memorandum M-21-10, *Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the FCPIAIA of 2015*, OMB Memorandum M-21-10 (M-21-10), available at <https://www.whitehouse.gov/wp-content/uploads/2020/12/M-21-10.pdf>). OMB Memorandum M-21-10 explains the agency responsibilities under the FCPIAIA of 2015 as: identifying applicable penalties and performing the annual adjustment; publishing revisions to regulations to implement the adjustment in the Federal Register; applying adjusted penalty levels; and performing agency oversight of inflation adjustments. As stated in that Memorandum, "the public procedure the APA generally requires – notice, an opportunity for comment, and a delay in effective date – is not required for agencies to issue regulations implementing the annual adjustment." OMB M-21-10 at p. 3.

In addition, section 553(b) of the APA provides that an opportunity for notice and comment on a proposed rule is not required when an agency finds, for good cause, that prior notice and public procedure are impracticable, unnecessary, or contrary to the public interest. BSEE finds that it is unnecessary to issue a proposed rule prior to this final rule because the FCPIAAIA of 2015 does not leave any discretion to BSEE—specifying the adjustments to be made, the methodology to be employed, and the index for inflation to be utilized—and that BSEE thus cannot choose to take a different course in response to comments.

Section 553(b) also provides that the requirement for notice and comment does not apply to “rules of agency, organization, procedure, or practice.” BSEE’s decision to address the civil penalty adjustment required by the FCPIAAIA by cross-referencing ONRR regulations, subject to the same standards for adjustment, rather than annually amending the FOGPMA penalties in each affected BSEE regulation, is an exercise of procedural rulemaking, which primarily concerns BSEE’s internal operations. Here, BSEE is organizing its internal procedures to meet its own legal duties. Moreover, while notice and comment is required for rules that affect rights or duties of the public, BSEE’s reliance on cross-referencing does not affect the rights of any regulated parties because the civil penalty amount will be the same regardless of whether those amounts are cross-referenced to ONRR’s regulations. ONRR must calculate and adjust the MDCP amounts in 30 CFR part 1241 annually in accordance with the FCPIAAIA of 2015 and related OMB guidance, just as BSEE must do.

.

IV. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the OMB Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant. OMB M-18-03 at 3.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 further emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements, to the extent permitted by statute.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. (*See* 5 U.S.C. 603(a) and 604(a)). For the reasons discussed in part III of this notice, BSEE is not required to publish a proposed rule prior to this final rule. Thus, the RFA does not apply to this rulemaking.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (1) Does not have an annual effect on the economy of \$100 million or more.
- (2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule will not affect that role. Therefore, a federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (1) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (2) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175 and Departmental Policy)

The Department strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We evaluated this rule under the Department's consultation policy, under Departmental Manual Part 512 Chapters 4 and 5, and under the criteria in E.O.

13175. We determined that this rule has no substantial direct effects on Federally-recognized Indian tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department's tribal and ANCSA consultation policies is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion (*see* 43 CFR 46.210(i)). This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. BSEE also determined that the rule does not implicate any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further NEPA analysis.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Continental Shelf—mineral resources, Continental Shelf—rights-of-way, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Reporting and recordkeeping requirements, Sulfur.

Laura Daniel-Davis
Principal Deputy Assistant Secretary,
Land and Minerals Management

For the reasons given in the preamble, the Bureau of Safety and Environmental Enforcement amends title 30, chapter II, subchapter B, part 250 Code of Federal Regulations as follows.

**PART 250—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER
CONTINENTAL SHELF**

1. The authority citation for part 250 continues to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 33 U.S.C. 1321(j)(1)(C), 43 U.S.C. 1334.

2. Revise § 250.1453 to read as follows:

§ 250.1453 What if I do not correct the violation?

(a) We may send you a Notice of Civil Penalty if you do not correct all of the violations identified in the Notice of Noncompliance within 20 days after you receive the Notice of Noncompliance (or within a longer time period specified in that Notice). The Notice of Civil Penalty will tell you how much penalty you must pay for each day, beginning with the date of the Notice of Noncompliance, for each violation identified in the Notice of Noncompliance for as long as you do not correct the violation. The maximum civil penalty amount for each day of such an uncorrected violation is as specified in 30 CFR 1241.52(a)(2).

(b) If you do not correct all of the violations identified in the Notice of Noncompliance within 40 days after you receive the Notice of Noncompliance (or 20 days following the expiration of a longer time period specified in that Notice), we may increase the penalty for each day, beginning with the date of the Notice of Noncompliance, for each violation for as long as you do not correct the violations. The maximum civil penalty amount for each day of such an uncorrected violation is as specified in 30 CFR 1241.52(b).

3. Revise § 250.1460 to read as follows:

§ 250.1460 May I be subject to penalties without prior notice and an opportunity to correct?

The Federal Oil and Gas Royalty Management Act sets out several specific violations for which penalties accrue without an opportunity to first correct the violation.

(a) Under 30 U.S.C. 1719(c), you may be subject to civil penalties up to the maximum amount specified in 30 CFR 1241.60(b)(1) for each violation for each day that it continues if you:

- (1) Fail or refuse to permit lawful entry, inspection, or audit; or
- (2) Knowingly or willfully fail or refuse to notify the Secretary, within 5 business days after any well begins production on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off production for more than 90 days, of the date on which production has begun or resumed.

(b) Under 30 U.S.C. 1719(d), you may be subject to civil penalties up to the maximum amount specified in 30 CFR 1241.60(b)(2) for each violation for each day that it continues if you:

- (1) Knowingly or willfully prepare, maintain, or submit false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information;
- (2) Knowingly or willfully take or remove, transport, use or divert any oil or gas from any lease site without having valid legal authority to do so; or
- (3) Purchase, accept, sell, transport, or convey to another person, any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted.

[FR Doc. 2021-13805 Filed: 6/28/2021 8:45 am; Publication Date: 6/29/2021]